



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2005

Ms. Myrna S. Reingold
Galveston County Legal Department
4127 Shearn Moody Plaza
123 Rosenberg
Galveston, Texas 77550-1454

OR2005-04197

Dear Ms. Reingold:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 224140.

The Galveston County District Attorney (the "district attorney") received a request for transcripts of telephone conversations of Robert Durst while he was incarcerated in Pennsylvania and awaiting extradition to Galveston, as well as for copies of the actual audio recordings. You state that the district attorney does not have transcripts of the recorded conversations at issue.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state, and we agree, that the submitted information is the subject of a previous ruling issued by the office. On January 6, 2005, this office issued Open Records Letter No. 2005-00212 (2005). See Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). In Open Records Letter No. 2005-00212, we determined that the submitted information is excepted from disclosure under section 552.108(a)(2). You state that the pertinent facts and circumstances have not changed since the issuance of this prior ruling. Thus, we determine that the district attorney may continue to rely on our ruling in Open Records Letter No. 2005-00212 with respect to the submitted information. As our ruling is dispositive, we need not consider your arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

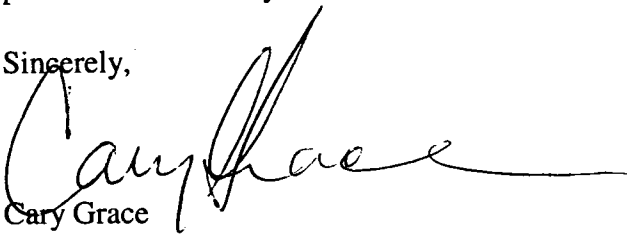
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cary Grace", written in black ink.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 224140

Enc. Submitted documents

c: Mr. J. R. Skaggs
Skaggs & Associates, Inc.
P.O. Box 571935
Houston, Texas 77257
(w/o enclosures)